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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KIM SON TRAN and
THI PHUONG NGUYEN.

KIM SON TRAN,

Respondent,

v.

THI PHUONG NGUYEN,

Appellant.

G055966

(Super. Ct. No. 14D004865)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Claudia Silbar, Judge. Affirmed.

Law Offices of Shun C. Chen and Shun C. Chen for Appellant.

No appearance for Respondent.

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Appellant Thi Phuong Nguyen (wife) appeals from a judgment of dissolution of her marriage to Kim Son Tran (husband), raising three issues. She claims the court did not properly issue the statement of decision, incorrectly ruled real property purchased during the marriage was not wife's separate property pursuant to transmutation, and abused its discretion in awarding sanctions against her to husband. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY¹

Wife met husband sometime between 1998 and 2001 in Australia. They purchased a home (Australia Property) in 2002 before they were married. Both were shown on the mortgage and both made mortgage payments. The parties married in 2003.

In 2009 the parties moved to the United States and lived with husband's parents. Thereafter they sold the Australia Property for \$385,000 Australian dollars.

In 2012 the parties purchased a residence in Garden Grove (Garden Grove Property). Husband did not apply for the loan because he was informed by a broker it would make it difficult to obtain the loan. Husband wanted to own the property with wife. The broker and wife told him he could add his name to the title later. In connection with the purchase, at wife's request, husband signed an Interspousal Transfer Grant Deed, which stated husband granted the Garden Grove Property to wife as her separate property for no consideration.

On close of escrow the Interspousal Transfer Grant Deed, showing a transfer to wife as her sole and separate property, was recorded. Wife is shown as the

¹ In setting out the facts wife violated California Rules of Court, rule 8.204(a)(2)(C), which requires an appellant to set out a summary of significant facts. Wife failed to set out all material facts, generally including only facts advantageous to her position, and also sometimes included irrelevant information that confused the issues. We could consider the appeal forfeited. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 53.) Nevertheless, to the extent we are able, except as specifically set out to the contrary below, we will address wife's arguments on the merits based, in part, on our own review of the record.

borrower on the deed of trust. Husband testified he always believed he owned the Garden Grove Property. Two weeks after wife and the parties' children moved to the Garden Grove Property, husband moved in as well. Husband asked wife to put his name on title before the purchase and more than once after the purchase. Although she agreed to do so wife never did.

In May 2014 husband filed the petition for dissolution showing a May 2014 date of separation. Wife's response showed the same separation date. Subsequently wife filed a motion to amend her response to show the separation date of August 2012. In granting the motion the court noted it would "consider sanctions" if "there [was] no basis" for the August 2012 date or if the claim was not made in good faith.

After a trial, the court issued a statement of decision listing four questions to be decided: the date of separation; the characterization of the Garden Grove Property; whether wife had a claim for reimbursement in connection with the Garden Grove Property; and attorney fees and sanctions. The court noted wife's arguments about the Garden Grove Property issues were "vague and unclear" but based on her arguments and evidence, assumed she was seeking findings under Family Code sections 852 (transmutation of property) and 2640 (contributions to property acquisition) (all further statutory references are to this code unless otherwise stated).

The court found the date of separation was May 2014, not wife's suggested date of August 2012. This was based on the fact both husband's petition and wife's initial response stated the May 2014 date. It also relied on husband's testimony he and wife were intimate, lived in the same house, vacationed together, and filed joint tax returns. Husband did not believe the parties were going to get a divorce until he learned of wife's boyfriend. Wife testified the parties were separated but invited husband to live with her to babysit the children. She admitted to the vacations and joint tax returns but denied intimacy. The court found wife's testimony as to this issue was not credible.

With reference to wife's attempt to amend her response to allege the 2012 separation date, the court noted it was raised more than two years after her initial response was filed and had no factual support.

The court also found the Garden Grove Property was purchased in June 2012 during the marriage and was community property. It found no intent by either party to transmute the property to separate property. There was no reasonable explanation as to why husband would agree to relinquish the only real asset owned by the community for no consideration. The court found husband's testimony about signing the Interspousal Transfer Grant Deed credible as well as the broker's request he sign it.

The court awarded wife \$40,000 from the approximately \$350,000 in equity in the Garden Grove Property pursuant to section 2640 and ordered the remaining equity to be divided equally.

Finally, the court ordered wife to pay husband \$5,000 in sanctions for having to defend against her attempt to amend her response as to the date of separation and in connection with two discovery motions. The court found wife's contention regarding the date of separation "was not a reasonable claim" and unduly prolonged the case.

DISCUSSION

1. Statement of Decision

Wife makes two arguments regarding the statement of decision. First, she claims the court failed to issue a proposed statement of decision, thereby giving the parties the opportunity to object. Second, she asserts the court did not address in the statement of decision "key issues" in wife's favor. Neither claim has merit.

After wife requested a statement of decision, the court ordered both parties to obtain a copy of the reporter's transcript and use it to prepare a proposed statement of decision. Two months later the court issued a minute order noting neither party had complied. The minute order also stated wife sought to withdraw her request for a

statement of decision. To do so, wife was required to file a written notice of withdrawal by a date certain. Failing that, the court extended the time for both parties to file a proposed statement of decision to December 1, noting failure to do so would result in the court setting a hearing on sanctions.

Thereafter, each party filed a proposed statement of decision. Thus, wife had the opportunity to file an objection but did not do so. The court then signed the statement of decision in a form substantially similar to husband's proposed statement.

Although wife did not raise this argument, we note the court issued the statement of decision 14 days after husband filed his proposed statement. California Rules of Court, rule 3.1590(g) provides a 15-day period for a party to file objections. However, this one-day discrepancy does not mandate reversal of the judgment.

“[T]he premature signing of a proposed statement of decision does not constitute *reversible* error unless actual prejudice is shown.” (*Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292.) Wife has not shown any actual prejudice. She did not attempt to file any objections. Nor, at a hearing on the fifteenth day, did she object to the one-day premature statement or ask for time to file objections.

Furthermore, there is no reason to believe her objections would have been well-founded. First, as the trial court pointed out, her proposed statement of decision was “not even close to a proposed statement of decision.” Rather, it was a legal argument and included exhibits.

Second, the seven “key issues” noted by wife in her brief that she claims the court erroneously failed to address are not well-taken. We could consider the argument forfeited because wife does nothing beyond listing the issues. She cites no legal authority and makes no reasoned argument in support of her claim.

“An appellant must provide an argument and legal authority to support [her] contentions. This burden requires more than a mere assertion that the judgment is wrong It is not our place to construct theories or arguments to undermine the

judgment and defeat the presumption of correctness.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*).) “‘Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.’” (*Ibid.*)

Wife’s statement of decision claims also fail on their merits. Pursuant to Code of Civil Procedure section 632, “The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial.” In rendering a statement of decision, the court is not required to address every question set out in a request for a statement of decision nor the specific evidence on which it relies to make its findings. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1530, 1531.) Rather, it is only required to set out ultimate findings of fact. (*Id.* at p. 1531.)

The court did so here. None of wife’s “key issues” goes to an ultimate fact. For example, wife complains the court did not address whether the Interspousal Transfer Grant Deed complied with the writing requirement of section 852.² But the court found there was no evidence of the required intent to transmute, so the question of a writing was irrelevant to the decision.

Likewise, the additional questions about husband’s knowledge, understanding, and willingness to not be on title do not go to ultimate facts. The same is true as to the “relative advantage[s] and disadvantage[s] gained by the parties” from the Garden Grove Property transaction. And the question of whether husband’s “prior handling” of the Australia Property had any bearing on this issue is unclear and does not go to an ultimate issue.

² Section 852, subdivision (a) states: “A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” (*In re Marriage of Begian & Sarajian* (2018) 31 Cal.App.5th 506, 513.)

The final item concerns whether wife is entitled to credit for post-separation payments for housing expenses because the children lived at the Garden Grove Property and husband paid only \$225 per month in child support. Wife has not set out any facts to develop this issue. It is therefore forfeited. “[I]t is not our responsibility to scour the appellate record for evidence to support a party’s position.” (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1270.)

2. *Transmutation of Garden Grove Property*

Although wife fails to set out relevant facts or explain her position in the trial court as to the Garden Grove Property, apparently she claims it is her separate property pursuant to the Interspousal Transfer Grant Deed. We could consider this issue forfeited on that basis but will consider it on the merits to the extent possible.

A “fundamental principle” of appellate law is the trial court judgment is presumed correct and the appellant has the burden to show, “on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment.” (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) When we review a judgment based on a statement of decision ““any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]” [Citation.] In a substantial evidence challenge to a judgment, the appellate court will “consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]” [Citation.] We may not reweigh the evidence and are bound by the trial court’s credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment.” (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 518.)

Wife claims the court did not use “the correct factors” to determine whether she “overcame the undue influence, when [husband] decided not to enter into the purchase” of the Garden Grove Property. Instead, she argues, the court relied on

“(subjective) intent . . . and consideration.” She claims she could not find case law addressing those factors.

Citing *In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 56, wife contends there are two factors to be considered as to transmutation: 1) whether husband voluntarily entered into the transaction understanding all the relevant facts; and 2) whether he understood the legal effect of the transaction. Wife proceeds to set out alleged facts showing he did, without citation to the record. But without a discussion of applicability of the case law and these factors, the argument is unpersuasive.

Wife fails to point out the contrary evidence, including that husband signed the Interspousal Transfer Grant Deed at the request of wife and the broker to facilitate obtaining the mortgage loan, he always believed he owned the Garden Grove Property, and he asked wife on several occasions to add his name to the title and although she agreed, she never did so.

As stated above, we may not reweigh the evidence but must consider it in the light most favorable to the judgment. The court plainly was not persuaded by wife’s evidence and instead found husband’s evidence credible. The record supports this finding.

Wife also relies on *In re Marriage of Delaney* (2003) 111 Cal.App.4th 991 that affirmed a finding the wife had used undue influence to obtain a joint tenancy interest in the husband’s residence. (*Id.* at p. 993.) Although wife does not discuss it, the *Delaney* court relied on section 721, subdivision (b), which provides that in transactions between spouses, as fiduciaries, they owe each other a duty of “the highest good faith and fair dealing” requiring that “neither shall take any unfair advantage of the other.” *Delaney* held that under section 721 “when any interspousal transaction advantages one spouse to the disadvantage of the other, the presumption arises that such transaction was the result of undue influence.” (*Delaney*, at p. 996.) The advantaged spouse has the

burden to show the disadvantaged spouse transmuted the property freely and voluntarily understanding all the facts and the effect of the transfer. (*Id.* at p. 1000.)

Wife made no such showing. She sets out facts to support her argument husband gained an advantage over her by not being on title. However, this is not the test.

We already rejected wife's argument the court failed to address issues raised in her request for a statement of decision. We also reject wife's assertion the court failed to cite any evidence to support its finding there was no consideration. As noted above, in a statement of decision the court is required to set out only ultimate facts, not the evidence underlying them. (*In re Marriage of Balcof, supra*, 141 Cal.App.4th at p. 1531.)

3. Sanctions

Wife asserts she was sanctioned for failing to settle the case but points to nothing in the record to support her claim. Neither the statement of decision nor the judgment show sanctions were awarded on that basis. Rather, they were awarded for wife's amendment to her response to change the date of separation and for two discovery motions. Thus, this argument is not well taken.

As to the sanctions for changing the separation date on her response, wife notes a recent change in the law, citing *In re Marriage of Davis* (2015) 61 Cal.4th 846 for the proposition living apart is a requirement for separation. But wife makes no argument as to how or why this case applies.

Wife further points to "abundant facts" to support her proposed separation date. But the court specifically found wife lacked credibility on this issue. "[R]esolution of conflicts in the evidence is a matter for the trial court. [Citation.]" (*Committee for Responsible Planning v. City of Indian Wells*, (1989) 209 Cal.App.3d 1005, 1014-1015.) We do not reevaluate credibility. (*In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1175.)

Wife also challenges sanctions awarded for her failure to allow an appraiser to access the Garden Grove Property pursuant to a demand for inspection to allow husband and his appraiser to enter and inspect it. In her response to the demand, wife objected to the appraisal date but suggested an alternate date. When husband, husband's counsel, and the appraiser arrived on the alternate date, wife would not allow them in. In response to a subsequent e-mail from husband's counsel that she would be seeking an ex parte order to compel the inspection, wife's lawyer stated husband's counsel had never informed him husband and counsel wanted to enter the Garden Grove Property and there was "no legal justification" for it. Wife's lawyer also stated wife properly refused entry into the residence and wife's bedroom because it was an "egregious invasion of privacy and outrageous harassment."

Thereafter husband's counsel sent a meet and confer e-mail stating husband's presence was necessary to determine whether wife had altered the Garden Grove Property resulting in a decrease in value. She also pointed out the demand for inspection had provided husband and appraiser would inspect and wife had not objected in her response, thereby waiving any objection. She asked whether wife would reschedule the inspection.

When wife did not do so, husband brought an ex parte motion to compel access for the appraisal and for attorney fees. In wife's opposition she sought monetary sanctions against husband and his counsel for "abuse of discovery process." The opposition argued the proposed entry by husband was an invasion of wife's privacy. It also stated the appraisal had been conducted.

The court granted the motion to compel access and awarded husband \$2,600 in sanctions against wife.

We review an appeal from an order granting discovery sanctions for an abuse of discretion. (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123.)

“Sanction orders are “subject to reversal only for arbitrary, capricious or whimsical action.”” (Tucker v. Pacific Bell Mobile Services (2010) 186 Cal.App.4th 1548, 1560.)

Wife has failed to show an abuse of discretion. She merely sets out a very abbreviated summary of what occurred and then states “the court should not allow an estranged husband and his attorney to enter her bedroom.” This is not sufficient to overturn the order. (Benach, supra, 149 Cal.App.4th at p. 852.)

4. Miscellaneous Issues

In the transmutation section of her brief, wife includes one sentence arguing that if the trial court “decides to characterize the [Garden Grove Property] as community property,” it should “subtract the reasonable amount of selling expenses before dividing the remaining equity.” This issue is forfeited because it was not set out under a discrete heading or supported by authority or reasoned legal argument. (Cal. Rules of Court, rule 8.204(a)(1)(B); Provost v. Regents of University of California (2011) 201 Cal.App.4th 1289, 1294 [“we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument”].)

Wife’s requests in the “conclusion” section of her brief, where wife seeks reimbursement of her \$20,000 downpayment on the Australia Property and \$70,000 for what she paid to remodel the Garden Grove Property³ are likewise forfeited for the same reason.

At oral argument, wife cited *In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411 for the first time, arguing it was dispositive for two reasons: First, it was error for the trial court to characterize the Garden Grove Property as community property because wife’s separate property funds were used to purchase it. Second,

³ It is unclear whether this issue is even properly before us. On the last day of trial the court stated it was reserving jurisdiction over “any debt,” apparently including the alleged \$70,000 debt. The judgment did not address any debt and noted the court reserved jurisdiction “over all other issues.”

because separate property funds were used, the trial court is required to apportion ownership instead of ordering reimbursement. These arguments were untimely as they were not raised in wife's brief. Thus, they are forfeited. (*Collins v. Navistar, Inc.* (2013) 214 Cal.App.4th 1486, 1508, fn. 8.)

Any other arguments on which wife may be relying for which there is no heading, authority, or argument are also forfeited.

DISPOSITION

The judgment is affirmed. Because husband did not appear, no costs are awarded.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.